

STATE OF TENNESSEE
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Opinion No. 05-094

Zero Tolerance Policy — Possession of Illegal Drugs on School Property

QUESTION

Whether a local education agency (LEA) has the authority under state law to adopt and enforce a zero tolerance policy that requires the expulsion of a student for a first-offense possession of marijuana on school property.

OPINION

Yes. Tenn. Code Ann. § 49-6-3401(g) mandates a one-year expulsion from school when a student unlawfully possesses any drug on school property. The director of schools may modify the expulsion on a case-by-case basis.

ANALYSIS

The General Assembly has decided, as a policy matter, that school authorities should have the necessary disciplinary authority to ensure a safe education environment. Zero tolerance policies are the result. *See* Tenn. Code Ann. § 49-6-4216. Every LEA must have a zero tolerance policy. Tenn. Code Ann. § 49-6-4216(a). A zero tolerance policy's purpose is to aid educators in ensuring that schools are safe and secure learning environments and to impose swift and certain disciplinary measures on the student whose conduct violates the policy. Tenn. Code Ann. § 49-6-4216(a). Violations of a zero tolerance rule or policy are not to be tolerated. Tenn. Code Ann. § 49-6-4216(b)(1).

Possession of an illegal drug on school property carries a mandatory one-year expulsion. Tenn. Code Ann. § 49-6-3401(g). Principals, principal-teachers and assistant principals must expel the student for illegal possession of drugs on school property. Tenn. Code Ann. § 49-6-3401(g).¹ The director of schools is the only school official who has the authority to modify the punishment of expulsion. Tenn. Code Ann. § 49-6-3402; § 49-6-4216(b)(2). During the one-year expulsion, the

¹Tenn. Code Ann. § 49-6-3401(g) reads in pertinent part: “[A] pupil determined to . . . unlawfully possessing any drug . . . **shall** be expelled for a period of not less than one (1) calendar year, except that the director [of schools] may modify this expulsion on a case-by-case basis.” (Emphasis supplied.)

student may be assigned to an alternative school. Tenn. Code Ann. § 49-6-3401(g); § 49-6-4216(b)(1).

A student charged with violating a zero tolerance policy must be given notice of the charges against him and an opportunity to present his side of the story. *See* Tenn. Code Ann. § 49-6-3401(c)(4); § 49-6-4216(b)(1) (“fair due process procedures”). As a general rule, this opportunity should be given before the student is removed from the school unless the student’s presence is dangerous or disruptive. Tenn. Jur., *Schools*, § 24; *see also* Tenn. Code Ann. § 49-6-3401(c)(1). The student’s punishment must rationally relate to the offense² and thus determination of appropriate punishment must include consideration of the student’s intent. *See Seal v. Morgan*, 229 F.3d 567, 575-76 (6th Cir. 2000).³

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²Tenn. Code Ann. § 49-6-4216(b)(1) states in pertinent part: “Reasoned punishment. . .”

³The Court stated that a board of education’s zero tolerance policy “would surely be irrational if it subjects to punishment students who did not knowingly or consciously possess [a drug].” *Seal*, 229 F.3d at 577.